IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 523 of 2006.

Reserved on: 04.07.2007.

Decided on: 06.08.2007.

Gokal Chand … … Petitioner.

Versus

State of H.P. and Others. … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the petitioner:	**G.D. Verma, Senior Advocate with Mr. B.C. Verma, Advocate.**
For Respondents No.1 to 3:	**Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakshi Sharma, Deputy Advocate Generals.**
For Respondents No.4 to 11:	**Mr. C.B. Singh and Mr. Vinod Gupta, Advocates.**

Rajiv Sharma, Judge:

The brief facts necessary for the adjudication of this petition are that the land measuring 3-12-16 bighas was granted as Nautor in favour of respondent No.4 on 31.3.1981. The respondent No.4 had sold the land in favour of

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Whether reporters of local papers may be allowed to see the judgment? Yes.

respondent No.5 on 29.11.1995 measuring 0-5-75 bighas, to Shri Lachhaman Dass on 30.5.1996 and to Shri Roop Lal, respondent No.6 on 8.7.1996. The petitioner being the estate holder of Mauza Chadiyara, Tehsil Sadar, District Mandi filed a petition under Clause 11 of the H.P. Grant of Nautor Land to Landless Persons and other Eligible Persons Scheme, 1975 before the Deputy Commissioner on 27.10.1998. Primarily, the main ground taken by the petitioner before the Deputy Commissioner was that Shri Lekhu was not entitled to get the land under the Nautor Scheme and he had sold the land on 29.11.1995, 30.5.1996 and 8.7.1996 in breach of the mandatory provisions of the Scheme. The Deputy Commissioner had passed the order on 26.6.2000 whereby he had held that so far as Khasra No.730/666/78 and Khasra No. 732/660/381 were concerned, the provisions of Clause 11 were not applicable, but he had categorically held that sale effected on 29.11.1995 in favour of Shri Rajinder was hit by Clause 11 of the Scheme. He had consequently recommended to the Government for resumption of land comprised in Khasra No.728/670 measuring 0-7-5 bighas situated in village Chadiyara, Tehsil Sadar, District Mandi. Respondent No.5 Shri Rajinder filed a review petition before the Deputy Commissioner on 7.8.2000. The Deputy Commissioner had allowed the review petition on 20.11.2000 by holding that the period will be reckoned for the purpose of Clause 11 from the date of mutation, i.e. 13.11.1980 and not

the date of sanction on 31.3.1981. The petitioner preferred a revision under Clause 9-A of the H.P. Grant of Nautor Land to Landless Persons and other Eligible Persons Scheme, 1975. The Additional Commissioner (Appeals) dismissed the revision on 12.3.2003. The petitioner feeling aggrieved by the order dated 12.3.2003 preferred a revision before the Financial Commissioner (Appeals) on 19.6.2003, but the same was not held to be maintainable and was dismissed.

Mr. G.D. Verma had strenuously argued that the order passed by the Deputy Commissioner on 26.6.2000 to the effect that he had held that so far as the sale of Khasra No.730/666/78 and Khasra No.732/660/381 were concerned, the provisions of Clause 11 will not be attracted, is illegal. He had vehemently argued that the Deputy Commissioner had no jurisdiction to review the orders passed by his predecessor on 26.6.2000. Mr. Verma also contended that in Himachal Pradesh Grant of Nautor Land to Landless Persons and other Eligible Persons Scheme, 1975 there was embargo of 20 years and not 15 years as observed by the Deputy Commissioner. The learned Advocate General contended that the Deputy Commissioner had the jurisdiction to hear the review petition, but had contended that on the basis of the amendment carried out in the year 1990 the embargo of 20 years was placed. Mr. C.B. Singh had supported the orders passed by the authorities.

I have heard the parties and perused the record.

The State Government had issued notification promulgating the Scheme called the “Himachal Pradesh Grant of Nautor Land to Landless Persons and other Eligible Persons Scheme, 1975”. Sub-clause (a) of Clause 2 defines the expression ‘Landless person’. Clause 5 lays down the mode for grant of Nautor land. Clause 7 provides that the Sub-Divisional Officer (Civil) of the Sub-Division and the Tehsildar of Tehsil in which the land is situated shall be the sanctioning authority for the purpose of the Scheme and the sanction order of Nautor land shall be made by the Tehsildar on the application. Clause 8 provides for mode of payment of Nazarana and its payment. Clause 9-A provides for revision. Clause 9-A as amended vide notification No.2-A(3)11/77 dated Shimla-2 the, 3rd July, 1978 reads as under:-

> ***“<u>9-A Revision:</u> If any time, it comes to the notice of the Deputy Commissioner either through an application made by any person or otherwise, that the allotment of any land under this Scheme was made to a person who was not entitled or eligible for such allotment or the allotment was wrong on any other grounds, he may call for the record of the case and after making such enquiries as he thinks proper in person or through a Revenue Officer subordinate to him and after giving an opportunity to the parties concerned, he may cancel the grant of land and make such other orders in connection therewith as he deems necessary in the circumstances of the case.”***

Clause 10 provides for the mutation. Clause 11, which is relevant for consideration of this petition, is reproduced as under:-

> ***"Restriction on transfer. – The grantee shall not transfer the land granted under this scheme to any person within a period of 20 years from the date of taking over possession of the land by him. In the event of contravention of the provisions of this para the grant shall be liable to be resumed by the State Government and no further allotment of land should be made to him thereafter. Similarly if he fails to break up the land within a period of 2 years from the date of taking over the possession the grant shall be liable to be resumed.***
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> ***Provided that the land granted under this scheme shall not be subject to fragmentation by way of partition, transfer or by any other mean. The Revenue Officer shall record these conditions in the mutation orders to be passed by him. His orders shall further be recorded in the remarks column of the jamabandi in which the mutation pertaining to the land is incorporated.***
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> ***Provided the allottee may transfer the land by way of mortgage without possession in favour of Primary Agricultural Cooperative Credit Society, a Bank as defined in the H.P. Agricultural Credit Operations and Miscellaneous provisions (Banks) Act, 1972 (Act No. 7 of 1973) for the purpose of raising loans for development of such land, raising of crops, purchase of bullocks, seed and fertilizers etc. for bringing the land under cultivation."***

The land has been allotted to the respondent No.4 on 31.3.1981. He had sold the land to respondent No.5 on 29.11.1995. The land was sold to Shri Roop Lal, respondent No.6 on 8.7.1996 and to the predecessor-in-interest of respondents No.7 to 11 Shri Lachhaman Dass on 30.5.1996. The procedure as per the Scheme for the grant of land is that the application is to be preferred under Clause 3 and thereafter the Sub-Divisional Officer (Civil) of the Sub Division and the Tehsildar of the Tehsil has to sanction the land. The Nazarana is to be paid as per clause 8 and on the payment of Nazarana the possession of the land is to be given to the grantee immediately after the sanction of land. The mutation of the land is to be attested immediately after the payment of Nazarana by the grantee either in lump sum or payment of first instalment of Nazarana as per Clause 10 of the Scheme.

In the present case, the land was sanctioned on 31.3.1981 and the mutation thus could not be attested anterior to this date. The Deputy Commissioner had wrongly construed the period of 15 years from the date of mutation, i.e. 13.11.1980 instead of date of sanction, i.e. 31.3.1981. There is further illegality committed by the Deputy Commissioner in his order dated 26.6.2000 as well. It is evident from Clause 11 of the Scheme that the embargo of 20 years has been prescribed for transfer of land granted under the Scheme as per notification No.Rev.2-A(3)11/77 dated 11.9.1980. The Deputy Commissioner had recorded the wrong date, i.e.

9.12.1987 instead of 11.9.1980. The notification dated 9.12.1987 as mentioned by the Deputy Commissioner is with regard to period of two years prescribed for breaking up the land. The land had been allotted to the petitioner under the 1975 Scheme and there is a specific embargo of 20 years for transfer of land in the Scheme. Accordingly, it is held that respondent No.4 could not transfer the land in favour of respondents No.5 to 11 within a period of 20 years. Thus, the Deputy Commissioner in his order dated 26.6.2000 should have cancelled the land allotted in favour of all the respondents, i.e. respondents No.5 to 11 and recommended to the Government for the resumption of the land. The order dated 20.11.2000 passed by the Deputy Commissioner is also bad in law since he had no jurisdiction to review the order passed by his predecessor on 26.6.2000 with regard to transfer/sale of land to Shri Rajinder, respondent No.5. It is settled-law that the authorities exercising the quasi-judicial functions have no power of review if it is not specifically provided under the statute.

The Hon'ble Supreme Court has held in ***Patel Narshi Thakershi and others v. Pradyumansinghji Arjunsinghji, AIR 1970 SC 1273*** that the power to review is not an inherent power and it must be conferred by law either specifically or by necessary implication. Their Lordships have held as under:-

> **"The first question that we have to consider is whether Mr. Mankodi had competence to quash the order made by the**

Saurashtra Government on October 22, 1956. It must be remembered that Mr. Mankodi was functioning as the delegate of the State Government. The order passed by Mr. Mankodi, in law amounted to a review of the order made by Saurashtra Government. It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order. The question whether the Government's order is correct or valid in law does not arise for consideration in these proceedings so long as that order is not set aside or declared void by a competent authority. Hence the same cannot be ignored. The Subordinate Tribunals have to carry out that order. For this reason alone the order of Mr. Mankodi was liable to be set aside."

The Apex Court has held in ***Tikaram Versus Mundikota Shikshan Prasarak Mandal and Others, (1984) 4 SCC 219*** as under:-

"It is not disputed that the Deputy Director and the Director are officers of Government and the nature of functions discharged by them while hearing appeals against orders made in disciplinary proceedings is quasi-judicial in character. It is also not disputed that neither of them has been authorised by the School Code to review their own decisions and that in the

absence of such power, an order made on review in such quasi-judicial proceeding would be ineffective. In the writ petition the appellant was not seeking any relief directly against the management on the basis of the clauses in the School Code. If the management does not obey the order passed by the Deputy Director or Director, it is open to the State Government to take such action under the School Code as may be permissible. In such an event, the recognition accorded to the school may be withdrawn or the grant-in-aid may be stopped. In the instant case the appellant is seeking a relief not against a private body but against an officer of Government who is always amenable to the jurisdiction of the Court. The appellant has merely sought the quashing of the impugned order dated November 26, 1976 passed by the Director on review setting aside the order of the Deputy Director. What consequences follow from the quashing of the above said order insofar as the management is concerned is an entirely different issue. In the circumstances, the High Court was wrong in holding that a petition under Article 226 of the Constitution did not lie against the impugned order passed by the Director. We are aware of some of the decisions in which it is observed that no teacher could enforce a right under the School Code which is non-statutory in character against the management. But since this petition is principally directed against the order passed in quasi-judicial proceeding by the Director, though in a case arising under the School Code and since the Director had assumed a jurisdiction to

review his own orders not conferred on him, we hold that the appellant was entitled to maintain the petition under Article 226 of the Constitution."

It has come in the reply of the State as well that on 13.11.1980, the halqua Patwari made a report regarding entering the name of grantee in landless register and the revenue agencies while entering the mutation had taken the wrong date as 13.11.1980 instead of 31.3.1981.

Mr. C.B. Singh had relied upon the judgment of this Court reported in **Nant Ram & Ors. Vs. State of H.P., 2004 (2) Cur. L.J. (H.P.) CWP No.362 of 1995, decided on 9th May, 2003** to support his contention that the Deputy Commissioner could not cancel the grant made in favour of the grantee. The judgment cited by Mr. C.B. Singh is distinguishable since the learned Single Judge had read the provisions of the H.P. Nautor Land Rules, 1968 in Himachal Pradesh Grant of Nautor Land to Landless Persons and other Eligible Persons Scheme, 1975. These two Schemes have different ambit and scope and their provisions cannot be inter-mixed.

In the present case, the sanctioning authority was the Tehsildar and the petitioner has alleged violation of Clause 11 of the 1975 Scheme before the Deputy Commissioner. The Deputy Commissioner after hearing the parties had recommended the case to the State for the resumption of land. The procedure adopted by the Deputy Commissioner

cannot be faulted with in view of the spirit of the Himachal Pradesh Grant of Nautor Land to Landless Persons and other Eligible Persons Scheme, 1975.

The upshot of the above discussion is that the Deputy Commissioner should have recommended the resumption of land bearing Khasra No.730/666/78, Khasra No.732/660/381 as well as Khasra No.728/670 for violation of Clause 11 of the Scheme. The land was sanctioned in favour of respondent No.4 on 31.3.1981 and there was embargo of 20 years for transferring the same. The Deputy Commissioner had no jurisdiction to review the order of his predecessor in absence of express provision of review in the Scheme. The Deputy Commissioner should have taken the date of sanction, i.e. 31.3.1981 instead of 13.11.1980 which is the date on which the halqua Patwari made a report regarding entering the name of the grantee in landless register.

Accordingly, this petition is allowed. The annexures P-3, dated 26.6.2000 and P-4, dated 20.11.2000 are quashed and set aside. The respondents-State is directed to resume the land which has been sold by respondent No.4 to respondents No.5 to 11 on 29.11.1995, 30.5.1996 and 8.7.1996 respectively within a period of six weeks from today. There shall be no order as to costs.

August 6, 2007 **(Rajiv Sharma), Judge**
(sck).